

MAINE STATE HARNESS RACING COMMISSION  
MINUTES OF MEETING  
**August 22, 2018**

Gambling Control Board Conference Room  
Department of Public Safety  
45 Commerce Drive, Augusta, Maine  
**Starting Time 9:00 a.m.**

Commission Members Present: Michael Timmons, Chair, Gary Reed, William McFarland, and Michael Graham

Commission Members Absent: William Varney

Staff Members Present: Ron Guay, AAG, Henry Jennings, Carol Gauthier, and Miles Greenleaf

Commissioner Timmons stated he would like to extend on behalf of this Commission and the people a big thank you to Commissioner Reed who has served on this Commission for at least seven years that he knows about and today is his last day on this Commission.

**1. Call the Meeting to Order and Introductions:** Michael Timmons, Chair

**2. Review and Approval of Minutes**  
None.

**Review and Approval of Decision and Orders**  
None.

**3. Public Hearing on Agency Rule-making Proposals Covering Proposed Amendments to Commission Rule Chapters 5, 7, 9, 11, and 17**

A Notice of Agency Rule-making Proposal was published on August 1, 2018 in Maine's five daily newspapers. The notice announced that the Department is proposing amendments to Chapters 5, 7, 9, 11, and 17. The public hearing is scheduled for August 22, 2018 and the deadline for written comments is 5:00 p.m. on September 7, 2018. The Commission will take testimony on the proposed amendments. Mr. Jennings stated that the deadline for written comments is the close of business on September 7, 2018. He stated that in Chapter 5 which talks about tracks there are two proposed changes that came from the horsemen that has to do with maintenance of tracks. A plan for purse distributions for the year. In Chapter 7, 11, and 17 are being reintroduced from the last rulemaking proceeding. There is very little change. In Chapter 7 he put a short paragraph for active participation as a trainer. If you're listed as a trainer you have to be involved. In Chapter 11 he changed he updated the reference to the ARCI medication list and they took the therapeutic medication reference out and incorporated the actual list of twenty something therapeutic medications without the withdrawal guidelines. In Chapter 17 they clarify the Commissions ability to suspend licenses and mimic the language in Title 5 which deals with administrative agencies in their ability to suspend licenses. Commissioner Timmons asked for comments related to Chapter 5 Tracks. Commissioner McFarland asked Debbie Patterson the executive secretary of the MHHA how many of the eight fairs right now do not have a signed agreement with the MHHA. Ms. Patterson stated she is waiting for Farmington and Cumberland. Michael Sweeney of Scarborough Downs stated that they feel this rule is quick into place specifically to address the situation that they do not have a contract currently in place between Scarborough Downs and the MHHA. He stated that there is and has been a proposal for a contract to be signed that's been sent to the MHHA and it's been on their desk in excess of three years at this point. It was an agreement to sign the last contract the exact duplicate of the last contract that the MHHA and Scarborough Downs negotiated. It just seems that it's inappropriate to put additional regulation in the face of an association in this point Scarborough Downs when they in good faith have tried to negotiate and sign a contract and their efforts have not been to bare any fruit. This proposal is something they could work with. It is totally impossible for them to completely understand what their purse income is going to look like in

March as opposed to them having a much better understanding of where they are in the course of the year in July when they did make some changes to the purse structure that they started out with. He doesn't believe it would provide substantial long term information to the Commission what their purse structure could look like early on in the year. Ms. Patterson stated that she knows nothing of the contract. She stated that Scarborough Downs and MHHA do work great together. They do handle a lot of purse money. They are not asking for something exact. They are looking for a schedule of what their plans are of what they plan to hold over and why they would like to hold it over. AAG, Guay stated that he thinks this rule is proper. Commissioner Timmons stated that Cumberland Fair knows where their money goes, but they still can have a plan. He stated that they do have a carry over and that's the horsemen's money. Chapter 5, Section 8. Michael Hopkins of Bangor Raceway stated that they feel that there are already adequate steps to protect horses and drivers at the tracks and meets. They were put in place by the Commission. He read Title 8, Chapter 11, Section 271, Subsection 2 in awarding race dates. Chapter 3, Section 5, Subsection 3 outlines specific procedures to be followed in the event there is a question of the conditions and safety on the racetrack. He stated that these procedures are always followed at Bangor. If there is a question, there is a group of three people a state representative, horsemen and association representative meet to determine the safety of the track whether to race or not race. He seems this is redundant. They oppose this change. Mr. Sweeney stated that they agree with Bangor. They would oppose this change for unnecessary regulation. There are already places in the rules that address this. Ms. Patterson stated the reason why the horsemen was requesting this change is if you look in the statute it talks about at race date hearings one of the criteria is track conditions. Their concern is they get to talk about track conditions one day out of the whole year and it's to get a license. They would never ask for someone to not get a license. If you look at Chapter 3, Section 3 track conditions, it talks about if there is bad weather. There is no real standard. They are just asking that your whole entire meet that your track is ready to race and be prepared. Commissioner Reed stated that in his mind he thinks how would the standard be measured. It seems a little vague to him. Commissioner McFarland stated that each association being required to have an annual maintenance plan that must be available as part of the license application. He finds it concerning that all of the eight agricultural fairs would be able to in some respect meet this track maintenance plan, and it would have to be only during the time that they are licensed because many of the tracks currently struggling having a hard job to find people to do some of the necessary work. In his mind, it could put a burden on some of the smaller fairs. AAG, Guay stated he has been consulted several times over the past five years here as to whether or not track conditions could be considered a violation, and without this rule it has been a matter of looking at the statute and existing rules and coming up with an answer all of maybe. This rule provides clarity to the regulated public that the condition of the track isn't only something that needs to be shown at the race date hearing as a condition for licensing. One of the things that he advises the department and the Commission was that it would be better if it was clearly laid out in rule that it would be a violation because then that would allow for any particular incident at any particular time to be brought before the Commission. Now, whether or not the Commission could find a violation or not that's a different question. That would remove any ambiguity as to whether or not something that happens during the race year could be brought to the Commission. That would conclusively answer that question. The statute does require that the tracks have a facility. One of the options that would have been available an arguable and some would argue would be to reopen the race license and put a condition on the license. Those conditions would be probably included as a requirement to provide a track maintenance plan. The one thing that Commissioner Reed said is the one thing the rules does in his view clarifies that the department could come before the Commission. The guidelines are a bit vague but that would have to be argued. Frankly from a practical standpoint nearly impossible because half an inch of rain could cause a problem on a track during mud season verses a drought season. He thinks it would nearly impossible to right a rule that would objectively quantify a track condition. What he is saying to you Commissioners is this would help the industry. First of all, he doesn't see this rule being illegal in terms of form of substance, and second it would provide clarity to the regulated public that it is an independent remedy of a violation and that it's not just a license proceeding matter. And the third thing these cases would be difficult to prove but at least it is a remedy that could be potentially available for obvious issues. Ms. Perkins stated that in the past that they have put conditions on racetracks that they had a set date and their track in condition. This year there was a little bit of difficulty in dealing with the people that were in charge of these racetracks. You have a committee that worked diligently with these racetrack people and they decided whether to race or not. She thinks you have a rule that's in effect and if it's used correctly she sees no problem. She is not for or against this rule. Catharine Damren, Maine Agricultural Fair Association, asked if the race directors that is responsible for racing at each location

received a copy of this in advance because she doesn't notice many of them here. Some of them probably this is not anything they are going to have an easy time applying to. Mr. Jennings stated that isn't even the process. The process is you publish it in the newspaper you send it to your list of people who have requested. Then it is up on the website in two locations as pdf. If anybody wants a copy all they have to do is, ask. Ms. Damren asked if she thinks they knew this was being proposed. Mr. Jennings stated he has a list at the office and three are here. AAG, Guay stated there is a period of written comment as well. Mr. Jennings stated he has four that need to see that language.

Commissioner Timmons stated that we will move to the next section. Chapter 7, Racing. Mr. Jennings stated what he thought was substantive is on page 22, section 46.1 added language. Then on page 33 and 34 regarding the percentages. AAG, Guay asked a threshold question to Mr. Jennings. He stated in terms of his anticipated review for form and legality he didn't notice prior that you intended to have an option. Is your view that once the option is selected you will have to republish this for public comment. Mr. Jennings stated no but that has happened before during these proceedings. AAG, Guay stated that what his understanding is that whatever is finally adopted has to be in its final form and has to have undergone proper amount of public scrutiny, and right now what you have before the public is not a final form. What you have is a document that has options. Mr. Jennings stated what will happen in his understanding is comment period closes on September 7<sup>th</sup>. They take all the comments; the Commission reviews the comments and they instruct the department as to which of the proposed amendments they support and which ones they don't and to the extent it's not a substantial change they can tweak the language. Then he has to go back and put it in final form and bring it before the Commission. There is a final rule that they vote on. AAG, Guay stated that he understands that. Would the removal of an option in a rule be a substantial change that would require republication? Mr. Jennings stated no not in his opinion. They selection from the options based on the hearing record what they think is in the public interest, and then it gets redrafted for final adopt then it goes to you to for final approval. AAG, Guay stated that he is concerned that removing an option from a rule would be a substantial change. He will need to get further opinion. He doesn't want any surprises at the end. He will need to check with colleagues in his office. Mr. Jennings stated in his perspective what's going on here is they are offering language for comment and consideration and all of the language is out there. He is struggling to find that it's a substantial change but that's your call on the end and if we need to publish for an additional ten days for comment period then that is what we have to do. This is a public hearing on the entire rule all of them. Mr. Sweeney stated that he thinks the change to this section has incredible merit and he congratulates the executive director in trying to come up with the right wording. He doesn't think this is the right wording. He thinks this is still very vague as to what the responsibilities of a trainer are. Periodic contact with a horse. What is that. AAG, Guay asked if there are situations when the owners make the veterinarian decision. Mr. Sweeney stated that when he was a trainer he always consulted with his owners as to what sort of treatment was given to the horse, but the ultimate responsibility and arrangement for those decisions. AAG, Guay asked if that was in all cases. If there is a landlord/tenant dispute the person that owns the stables is going to sue the trainer and not the owner. Mr. Sweeney stated that is a very good question. We've heard testimony in front of the Commission in the past during adjudications that owners have made decisions to medicate a horse and that's been used as a defend for the trainer not being liable. AAG, Guay stated the reason he is asking that is if we define that as the duty of the trainers then are we saying that owners can't make veterinarian decisions. Mr. Sweeney stated that your defining the duty of the trainer but are you going to use that further on down the line when it comes to adjudication of positive test when it comes to who was responsible for maybe entering a horse and failure to honor a declaration. AAG, Guay stated as you know the long-standing rule here is the trainer of record is the absolute insurer and that's a different concept. His concern is if we start building test whether or not that person's a trainer in order to have trainer responsibility we're actually kind of weakening our regulation right now. Right now, we say it doesn't matter if you pay for stalls, it doesn't matter if you make the veterinarian decisions, it doesn't matter if you pat the horse on the head once a year, it doesn't matter if you're the trainer of record you are liable. To the extent, we start defining what a trainer is his concern is then people will start coming here as trainer's and say well I didn't make the veterinarian decisions. As of right now it doesn't matter. He would like to keep what the Commission considers a trainer. The minimum things a trainer has to do to be a trainer versus whether they're a trainer on adjudication that is two completely separate things. Mr. Sweeney asked if he thought the proposed change to this rule accomplishes that or do you think we are better off not making this change. AAG, Guay stated his understanding of the concern is there are these phantom trainers that have never seen the horse ever. He has not seen no evidence of it yet at a hearing but the understanding is what occurs is that people will contract with people who might

not even be in the state of Maine and list them as a trainer in order for that horse to be able to be entered into races. That's the issue you're trying to get to which is different than holding the trainer responsible for the condition of the horse. He thinks this is a really good idea and he doesn't usually weigh in on policy but from a legal perspective we got to keep it separate from trainer responsibility. Trainer responsibility rule is if a horse goes in it had a drug in it bang it doesn't matter what the trainer did that person is automatically responsible. What we are saying now is in order for it to be transferred the trainer has to at least do something to with the horse to be considered a trainer. Mr. Sweeney stated that he thinks you're walking down a slippery slope by changing this because the sentence that is currently in this section says the trainer is responsible so now you're going on a broadening out what responsibilities the trainer has. If you're looking to keep the absolute rule this rule is weakening that. He doesn't think this language is accomplishing what the Commission wants to accomplish. Mr. Jennings stated that he is trying to balance your perspective from his and he started down this path of maybe it's the financial responsibilities that define that. He's wondering if this language could be embellished by someone who has experienced training to list the level of involvement that we think is the minimum level of involvement. Does that trip a threshold? Can this be expanded some without going into the finance and the ultimate decision. AAG, Guay stated no he thinks it can. He guesses now that Mr. Sweeney has spoken a bit more he can sort of see his concern that it's tacked into the sort of the trainer responsibility rule. It might better to be somewhere else maybe not in this very section. Honestly, sitting here at this moment this is the trainer responsibility rule isn't it 46. Mr. Jennings stated yes and there is similar language in 11. AAG, Guay stated that someone could use in defense in the future or attack our trainer responsibility he understands their concern. He also understands the concerns of the department to guard against these paper trainers. Mr. Sweeney stated that he is completely sympathetic to the department he hates to see paper trainers showing up on the program that he knows have no contact with the horse and the betting public knows that they have no contact with the horse yet their name shows up. He thinks we need to do something to alleviate that problem. He just doesn't think this wording does it. Mr. Jennings stated that maybe to AAG, Guay point that maybe it's not in the right spot. Commissioner Timmons stated that he thinks we have a lot more work to do on this. The other problem and he thinks it's probably already addressed is when the man has three venues and they have fifteen horses and they have one at Union, one at Cumberland and one in Plainridge that same trainer can't be in those three places. That does cause a problem because then their responsibility and the owner and the trainer makes it very very difficult, and he thinks it's the responsibility of that facility to make certain if they're down there as trainer and they've been assigned that responsibility then they need to know what their responsibility is and what their liability is and the owner needs to know as well. AAG, Guay stated that Mr. Jennings has worked very hard and worked with the Commissioners. This is a very very hard needle to thread. He wants to make sure especially when you do the final rule adoption that they on the record a discussion of a specific point and to the extent he might be confused by what your intent is right now and to the extent the regulated community is, he doesn't want to have an argument in court someday that it's confusing so when you're looking at this very section you're talking about you've got a trainer, three people, three venues in a day. This rule contemplates they have a responsible person. That responsible person the same as the trainer of record and he will tell you why. There's a trainer, can't be at three places and he names a responsible person to go to Cumberland and that horse test positive for a drug test. The trainer of record has been the guy who's not at Cumberland but instead a groom or any other responsible person. Who are we going to hold responsible under the trainer responsible rule. Is it the original trainer, it is the responsible person? If the responsible person under this rule is not a trainer can we put on them a trainer responsibility if they're a groom. That's the kind of thing that we need to be really really careful on this section. It's more than just defining the trainer. Now we're allowing grooms to go to a facility for practical reasons but ultimately, who is going to be responsible if that animal has a positive test result. Commissioner Graham stated the trainer. There is only one trainer. He may have designated someone to represent him at the track but the trainer is still responsible. AAG, Guay stated even if the designated person is a trainer. Commissioner Graham stated it doesn't make any difference. It's the trainer. AAG, Guay stated then you need to use "of record" because you are allowing to have another trainer to show up and put a horse in on that race day. Mr. Sweeney stated that there is a lot of change of verbiage concerning the trainer of the day and maybe that's the term that they need to appoint a responsible person who will ensure that the horse is raced on that day. He doesn't think you want the rule to imply that you're taking the responsibility away from the trainer of record, but you do need as Commissioner Timmons said that a trainer can only be at one place at one time, so it's traditional nationwide to send horses to a racetrack with a groom or a responsible person. This wording here he just wants to make sure from a tracks perspective and he thinks it does that the

responsibility to name that person to be responsible for that horse is the trainer of record, and not the horse identifier to determine that the trainer isn't there and come up with somebody to report to the paddock judge is going to be responsible. He doesn't want as an association he doesn't want the responsibility of determining that the trainer isn't there and find somebody who is going to be responsible for the horse. Mr. Jennings stated that it says the trainer must designate. AAG, Guay stated in another section this is a really good opportunity to really consider all these trainers flying in and out. If the horse is called into the test stall, is it the trainer of the day that is responsible or the trainer for the day. Commissioner Graham stated that you need to back off this trainer of the day. There's no trainer of the day. There's one trainer. There is someone appointed to take care of the horse for the day but he's not the trainer; and if the horse doesn't go to the urine stall, the trainer is responsible and also the guy who didn't do it who's responsible should also be hung. AAG, Guay stated as written in "F", if you're going to allow trainers to not be present at the racetrack thus not be able to be in a position to control that horse to hold them responsible for that for the conduct that occurs on that day is going to be a problem in a court. A trainer of record is responsible for the condition of the horse; presumably, the drugs that are in the horse that occurs prior to the date of the horse going in, but to say that you are going to allow a trainer to be let's say they're going to Hawaii on vacation and that trainer who's in Hawaii is going to be held responsible for the responsible person not bringing that horse in for testing. He thinks that is going to be a very difficult proposition to defend in court. Mr. Sweeney stated wouldn't an employer be responsible for the actions of their employees because that's technically what you have here. You have an employer and employee relationship between the groom that the trainer has named responsible for the horse during that period of time. AAG, Guay stated no. Commissioner Graham stated that he disagrees with Mr. Guay. He believes the trainer is responsible and if he appoints somebody that isn't responsible then he made a mistake that's life. He gets fined or whatever the penalty is. He believes the trainer is responsible one if he has going to have horses racing in three places. He's taking some risk if he appoints somebody that isn't a responsible person. Mr. Sweeney stated he thinks Commissioner Graham has outlined it brilliantly. He thinks that's exactly the way the industry needs to operate. It's up to them to come up with wording in the rule that accomplishes that. He agrees with Commissioner Graham that if the groom is responsible for the horse and he forgets to bring the horse to the stall that person is held just as responsible as the trainer of record for failure to obeying the orders of a race official. AAG, Guay stated that he respectfully disagrees from a legal perspective and to the extent anyone ever challenges he will tell you it is susceptible to legal challenge. That's all he can do is give his legal opinion. Mr. Jennings asked if he saw a clause that could hold them jointly accountable. Do you see some middle ground that addresses his concern? AAG, Guay stated no he truly doesn't and the reason why is there is there's a proposition of law that licensees need to have some reasonable certainty that they do things that can result in their compliance and there is absolutely nothing that person in Hawaii can do to make sure to ensure compliance. This isn't employee and employer. This is the State of Maine acting as a solvent body penalizing their citizens. It's a completely different situation because of that the rules of when we can punish people as the state is a lot different than concepts in a lawsuit whether or not he can sue McDonald's because its employee left water on the floor. We are the state and when we impose penalties against people we are acting against their constitutional rights. Yes, he understands that an employer is responsible for the activities of the employees. He gets that. This is the State of Maine fining people for conduct when they weren't even present. He thinks it is a problem. You can adopt the rule but he's giving legal advice. Commissioner Timmons stated that we have some work left to do here. Commissioner McFarland stated that Chapter 7, Section 46 duty of trainer. The trainer is responsible for the condition of any horse under his or her care. After all of that discussion it's very clear that it should say the trainer of record. That certainly needs to be in this chapter. AAG, Guay stated that he thinks you can refer to section 2. Isn't that how the record is established. The trainer that has been identified on the horse's eligibility certificate. Is that essentially who the trainer of record is. You can make reference to 2 instead of having a vague term. Mr. Sweeney stated that from the USTA's viewpoint once an entry is taken in the race office and the trainer and driver information is put into the program that trainer name gets repopulated onto the certificate. Every time a horse gets entered the trainer is either verified or changed with the USTA. AAG, Guay asked if number 2 is how you would establish a trainer of record. Mr. Sweeney stated it would be a way of identifying who the trainer of record is. AAG, Guay stated that Mr. Jennings as prosecutor would have to introduce evidence that the trainer was trainer of record. So, it's not 2; then if it's the race program, then you need to put in a description the trainer of record who is described in the race program. His point is you just can't put trainer of record because if you don't define who it is you're going to have people arguing that they weren't trainer of record. Mr. Sweeney stated that either one would work. Commissioner Timmons stated however, right

now in our state there isn't a single person that owns, trains, and races horses that doesn't know who the responsible person is for that horse when they go to race. Commissioner McFarland asked how do we prove that if it comes to this level. Ms. Perkins stated that it has to be on the declaration form. Commissioner Graham asked if that works anymore with the electronic. Ms. Perkins stated that eligibility certificate is wrong. AAG, Guay asked what does the Commission approve. It says it must be approved by the Commission. Mr. Sweeney stated that the Commission doesn't approve anything. AAG, Guay stated ultimately, you've got to put yourself in the shoes of a judge who's never been to a harness horse racing meet. What they are looking at is purely the language in section 46. You have a rule that says a responsible person, so the rule allows that, so on that day he's a trainer I got a horse down at Cumberland can you be the trainer for me. Sure, I'm the trainer oh that horse has a positive test. Which trainer. We know which trainer, it's the trainer of record. Is it the trainer that's under "b" that got the substitute? Mr. Jennings asked if he could request the Commission that you give him the opportunity to work with Attorney Guay to nail this down and develop language that nails this down and to the extent that we can make policy that's consistent with your viewpoint that the trainer should be responsible to the extent the law provides. He just wants to observe that if the responsible person calls the presiding judge and uses profane language with them that's probably not going to go back to the trainer of record, so there's a few things that this responsible person does at the day at the track that you would probably would never say while the trainer was responsible because you swore at the judge. They need to carve out some lines and delineate this as best we can. We can sit here and go around in circles for quite a while and he was just wondering if it makes more sense. Commissioner McFarland stated as long as he has been here he has yet to see a violation that came in here against a trainer that that trainer wasn't named in the race program for the race on that day at that time. That to him is the trainer of record. That's all the evidence that the state has ever provided him to determine he was the trainer of record. He doesn't know why that wouldn't work. Commissioner Timmons stated to Mr. Jennings that he can continue his work and Mr. Guay can help. In Chapter 7. Mr. Jennings stated he'd like to take some comments on purse distribution requirements on page 33. Where are you with respect to your sense of this, does the Commission need to be involved in specifying the purse distribution or is that something that is left between the horsemen and the race secretary and the track, or do you want to say what it should be and then give yourself an opportunity to approve of their answer from that. Where do you want to go with that? Commissioner Timmons stated he thinks that has always been left to the racing venue where that track is held and they make that decision with the race secretary. Mr. Sweeney stated when it comes to determining how much purses would be you're correct, but he thinks what Mr. Jennings is talking about is giving the current rule specifies how purses are to be distributed within each individual race. That rule is very specific and it really doesn't give very much latitude at all for the racetracks or horsemen's association to make any changes to it. He has always been a traditionalist when it comes to horse racing and he's seen how things have been done for a long period of time and he thinks they should continue to be done that way but he is starting to evolve on a lot of things and this purse distribution is one of the things he was opposed to paying out below 5<sup>th</sup> place money. He's looking at the reality of harness racing in the State of Maine right now and our horse supply issues and the smaller stables are struggling and can't compete with the professional stables any more. This will give an opportunity for people to keep horses around and make money. They tried paying out 8 places in the European Races this year. He would recommend the Commission consider giving the responsibility for purse distribution to an agreement between the racetrack and the horsemen's association so that they can come up with something that will work in the current day and age. Mr. Jennings stated that he wanted to piggyback a little bit. If there's a five-horse field in the current system everybody gets a paycheck. You get a ten-horse field and you have five horses out of the money and so are they going to put into the race if they don't feel they are one of the top five horses. We aren't going to have a European race if no one is going to put into it. He's just advocating for some flexibility. Commissioner McFarland asked Ms. Patterson if any of this has been fielded to her membership with respect to changing the traditional purse distribution as we currently do it. Ms. Patterson stated there has been no official conversation. As a board, they did ask Scarborough Downs because it was like an experimental thing. As Mr. Sweeney said you now have five horses that are not getting anything we like to really pursue this type of racing and bring different things to Maine. Commissioner McFarland stated that he would concur with that 100 percent but this is an exception to everything that's going on the rest of the time; and he doesn't know why they would want to change the whole thing when in fact all we have to do. Did we not give approval for that to happen? Ok, it didn't happen in time. There's no reason the Commission can't give approval to the exceptions to the purse distribution in situations like this as far as the European market goes. That leaves everybody else knowing

what they're going to get at those other venues when there's no special races. This is what this is. It's an exception it was a special race. He agrees with it. He thinks you need to pay more places but he'd hate to think that you go to Union and well I'm going to get 47%, 10%, 5%, 6%, 2%, and so on. Leaving it open makes it different everywhere you go, and he doesn't like that idea. He likes the 50, 25 right now for the standard racing. You have an exception fine. Commissioner Graham stated that he tends to agree with Commissioner McFarland. He thinks they can approve some of these things. Mr. Sweeney asked for some clarification on page 5, section 15 types of racing adding a section for special races or racing with the Commission's permission. He wasn't sure what they meant. Commissioner McFarland stated what they just had the European races. Mr. Sweeney stated that was not approved by the Commission. Mr. Jennings stated that he read the definition of each one of them. He is not sure that some of the things they are talking about fits any one of these definitions and Scarborough had to use the late closing rule to do the European race. It doesn't fit perfectly but it's legal. It's just an opportunity for something that doesn't fit in any one of these neatly to bring it to the Commission. Mr. Sweeney stated page 7, section 6, subsection E opening up the claim box. Changing this section to provide that an announcement would be made that a claim has been entered over the public-address system at the conclusion of the race. Currently they are doing this during the post parade to give the wagering public the opportunity to know that a claim has been entered on the race. He thinks this is a bad change in contrary to the way things have been done in the rest of the country. We need to keep the wagering public in consideration when we're promulgating our rules, also the way this has been changed it precludes them from announcing who the successful claimant is. It takes that phrase out. Always at the conclusion of a race after a horse has been claimed the successful claimant is announced to the wagering public. Page 9, section 18 we're talking about conditioned races adding a section here #9 Maine stakes winnings shall not effect Maine horses that are 4 year olds or older. Does he take this to mean that a horse that has raced as a 2 and 3 year olds that all those winnings will be discounted when the horse turns 4, so that all the sudden a horse like Pembroke Perfect who won 23 races as a 2 and 3 year old is considered a maiden as a 4 year old and then racing in against those types of horses he thinks that would be grossly unfair to horses that would be moving into that sort of category. Currently the race secretaries have the ability to discount Maine sire stakes wins, they do that at Scarborough Downs but a blanket statement saying that they are totally going to disregard earnings that a sire stakes makes in the State of Maine once it becomes 4 is just bad policy. Page 18 they're talking in number of starters when it comes to superfactor races. This is tightening up the rule. Currently you have to have 8 horses programed in order to have a superfactor and if they lose 2 horses in a race then they have to cancel the superfactor. This rule says that superfactor races are limited to no more than 8 entries so if they had 9 horse field he couldn't have a superfactor race in it, and at no fewer than 7 horses shall start the race so it would mean that he would have to cancel superfactor wagering earlier. Mr. Jennings stated he wanted to comment that some of this you're hitting on is rules committee language and he would invite Mr. Sweeney to send him the language that you think makes sense. This is out of his area. Mr. Sweeney stated that he worked on this section and he knows this isn't what they proposed. He can find that for him. Mr. Jennings stated that is helpful for him because he doesn't know these bets very well so he relies on people that do know them to provide the language. Commissioner Graham asked if it would work if they changed the word to no more than to no less than. Mr. Sweeney stated that the language that they proposed in Chapter 13 which they are not taking up at this point allows them to program superfactor races with either 6 or 7 horses. It mirrors the trifactor rule and they could still have a superfactor race even with a 5 horse field with deletions. He can send that wording too. Mr. Jennings stated that he needs that language by September 7<sup>th</sup>. Mr. Sweeney stated on page 24 and 25 when they're talking about protection of horses, this is really wide open language in here. He knows they want to protect their horses but this language really opens up who is responsible for the protection of the horse. It imposes duties on multiple people who really cannot be identified at the time. A trainer, a groom, driver, or an owner and it's racing at a track with a judge, a starter, a paddock judge, or other licensees. How many of those licensees have jurisdiction with respect to the well-being of the horse at that time, and what is meant by saying they must prevent the horse from being subjected to any form of neglect. For example, does the paddock judge have the responsibility to say you haven't watered your horse enough after this race so you need to give him more water because that's going to constitute neglect. He thinks that is too broad of language very similar to his objection to the trainer responsibility change. Mr. Jennings stated that piece came out of a review of Chapter 17 which there was a penalty for certain behavior and there was no standard in the rule that says this behavior is prohibited, so then they went to look to see if they could find something on cruelty. They did find something in either the ARCI or USTA model rules. They can get rid of it but they would probably have to change Chapter 17 or we could tighten it up or you could submit some

suggested language. Mr. Sweeney stated that the rule needs to do is to require that people who are genuinely responsible for the well-being of the horse are held responsible. In this case, it would be the trainer of record or the groom who is caring for the horse. He stated he would submit language. AAG, Guay stated that he reviewed this language for Mr. Jennings and he didn't see a legal problem with it. He asked if this was intended for activity that occurs at licensed facilities or is this intended to reach let's say what trainers do outside of race meets like at their barns and stuff like that. Mr. Jennings stated that the intent was to make sure there was a prohibition against activities or conduct for which there was a violation listed in Chapter 17. What they did was noted there was a hole in that Chapter 17 there's a penalty for cruelty and they didn't have any prohibition, so they just went out and looked at two standards which for a rule language and the ARCI and the USTA both have model rules. That pretty much lifted one of them. He can see there's problems with it. AAG, Guay stated that the Commission intends that that rule would be enforced at racetracks during race meets not generally. Isn't it true that the Department of Agriculture generally would have for animal cruelty and animal welfare types of issues don't they investigate that for horses and stuff. Mr. Jennings stated that they truly have authority to and generally they don't get involved in racing. AAG, Guay stated that if someone leaves a horse at Scarborough Downs and not during a race meet that would be the Department of Agriculture getting involved. Commissioner Timmons stated that they would go to Chapter 9. Mr. Jennings stated that both of these came from the MSBOA. On page one they wanted the department to be notified about where horses are stabled to facilitate out of competition testing. And then if you move the horse you needed to let the department know. The second thing they wanted was to change for the final the purse distribution. Originally, they wanted three hundred dollars and they decided that was hippodroming and we had a rule that that would conflict with. They went back and said that 6<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> would be paid different percentages. To avoid conflict with hippodroming so in the finals they wanted to be able to pay 6<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> and one of the things they explained to him is part of their rationale is if he's the number 8 horse in the final and he knows his chances of getting in the money are low he's better off in the consolation race. The people in the consolation race are actually in that bottom third of the class of horses that they don't have an incentive to get into the final they have an incentive to get into the consolation race. He thinks that's part of the reason they wanted to do that. Commissioner Timmons asked if anyone else wanted to make comment on these two changes in the sire stakes program. Mr. Sweeney stated that as he testified earlier he's evolved in his thinking when it comes to paying out purse money outside of 5<sup>th</sup> place he thinks it should be done on a regular basis. Definitely should be done in the finals of the Maine Sire Stakes races, overnight races, and the legs of the Maine Sire Stakes races. He thinks they should come up with a way to make sure that people who invest their time, their money, and their energy in owning and training horses in getting into races are compensated for getting those horses to the races. He thinks there are valid ways of accomplishing that; however, this scheme that's being proposed in Chapter 9 is quite convoluted to describe it. What it really does is it presents an opportunity to calculate two distinct purses. It requires that you take the base purse for the sire stakes race and then withhold in essence 3 percent of that to be paid to 6<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup>. So you're paying 6<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> purses from a different amount of money than you're going to be paying 1, 2, 3, or 5 because once you take that money out of the base purse your base purse is reduced and then you're going to add in all of the funds money that goes into calculating the actual purse and then you're going to have a different purse listed on the program then what you're actually using to pay out money in essence you're going to pay out more than 100 percent of the advertised purse and the math just does not allow that. This is a troubling formula to make. He's asked representatives of the United States Trotting Association if their racetrack system can accommodate this and their answer is no. He's asked their bookkeeper at Scarborough Downs if they can accommodate this and they said no. He just thinks there are better ways to accomplish what needs to be accomplished here than what's been presented. Commissioner Graham asked Mr. Sweeney if he is going to submit something. Mr. Sweeney stated that he has submitted a proposal when he was here last month that would accomplish what he thinks would be fair basically what he presented and he's changed his mind in the interim was to pay out 47 percent to the winner and 22 percent to the 2<sup>nd</sup> place finisher and keep 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> place money the same and pay out 3 percent to 6<sup>th</sup>, 2 percent to 7<sup>th</sup> and 1 percent to 8<sup>th</sup>. This gives significantly more money to the 6<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> which he thinks it is more of an incentive to try to give people to stay away from moving into the consolation rather than the final. The one change he would make and he originally recommended paying out 22 percent for 2<sup>nd</sup> place finisher and that takes a little bit too much money away from second place so he thinks he would recommend now paying 23 percent to 2<sup>nd</sup> place and 11 percent to 3<sup>rd</sup> place instead of 12 percent. He thinks that is a little bit more equitable for people who are in the higher premium decisions. That would be his recommendation and for all races in the State of Maine. We need to encourage people to purchase horses and to keep horses in the



State of Maine. Commissioner Timmons asked for any final thoughts on this. Commissioner McFarland asked Ms. Perkins if the MSBOA field this at all. Ms. Perkins stated yes, they did and they felt that what they asked for is what was voted on at the last meeting. If they had the time Mr. Sweeney's suggestions had not surfaced. Mr. Jennings stated that they had voted on something and they weren't in a position to have a meeting in time to massage this. He is very much aligned with Mr. Sweeney. He had a meeting with the race secretaries to figure out a way to get some money in the hands of the people who are the hobbyist who are consistently finishing 6<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup>. Commissioner McFarland stated that he could live with the formula that Mr. Sweeney presented. He thinks that's fair and it would give money back to the low end. It would help the industry right now. Ms. Perkins stated that the only time this would be used is if there would be a consolation race. Commissioner Timmons stated that that is something you would have to work out. Commissioner Graham stated that we are talking about changing it and we would have to have a whole set of hearings for that right. Mr. Jennings stated that probably what AAG, Guay said that we could send out for another 10 days. AAG, Guay stated that his perception is Mr. Jennings sent back and write the rules and he has been attempting to lead the will of the Commissioners over the last 12 months, and has come up with proposals so to the extent that you can provide him some very concrete feedback it sounds like you may have an idea or there is an idea that you'd like put into the rules and he thinks that would be helpful rather than Mr. Jennings going back. He can't help him draft rules. It's not going to be helpful if he goes back thinks he understands what you want comes back and you say nope try again. Mr. Jennings stated what he has heard from two people is some formula similar to what Mr. Sweeney is proposing to take the place of what's currently in Chapter 7 on the distribution is something that may make some sense for the future of the industry. You probably want to hear from the other two Commissioners and then if that's the case he has to work with Attorney Guay about is this a substantial change and are there other substantial changes. He's with Attorney Guay, lets get it right this time. AAG, Guay stated his response to Commissioner Graham is yes you can give him the direction. It may require an additional publication which will not involve this Commission not another public hearing. It may delay the final adoption by a month but yes you can tell him how to change the rule right now if the four of you agree. Commissioner McFarland asked if he could ask the MHHA executive director one more time. With respect to the discussions just been going on here, do you think or could you possibly have a meeting between now or when we make a decision that they might go along with this change. Ms. Patterson stated they have their meeting Friday night and she will put it on the agenda for them to discuss. They will give Mr. Jennings a public comment pertaining to this. Commissioner McFarland stated that it will affect their membership. Mr. Jennings stated is your thought for overnight races he knows they have it listed for the finals in the sire stakes but Mr. Sweeney is suggesting maybe this formula like he is suggesting is for the legs. Ms. Perkins stated that they could call a board meeting but it's going to be difficult to reach the membership because they just voted on this. She can inform the president exactly what he is asking for. Mr. Jennings stated that he will get the formula and he tried doing it himself and he came pretty close to what Mr. Sweeney originally proposed. He can take that formula and email it out to the two associations and say what is your comment or viewpoint on making this the standard purse distribution for both sire stakes and for overnights. Then you can always have any variance can be approved by the Commission because he thinks this is a time to look at where we are as an industry and ask ourselves if it's important enough to try to keep those lower classes of horses by changing something that's been around since 1937. Commissioner Timmons stated that he doesn't have a problem proceeding in that direction. They all agreed. Commissioner Graham stated that he would like both the MHHA and the Maine breeders to try and send it out by email or something to their membership so they can get some comments, and he doesn't know how the average horsemen feels and he would like to know that. AAG, Guay stated that his only comment is and the part they struggle with is this is state government. This isn't a club or a business and because we are a state government there are certain statutes around rulemaking so that's what we are constantly bumping up against. If we were just an association, yah let's have a committee etc. There are timelines, public hearings, certain number of days, certain number of days to get the rulemaking done; unfortunately, as much as it's good to get all of this done it has to fit under the legal structure. That's 90 percent of the frustration is you want to get input from various boards and it takes them time to get the vote and take a position. At the end of the day it's this Commission rules and you're going to have to pick a way to do it and be mindful that the law says that you've got to do it a certain way. It's good that you want to get input but that can't overcome what the law says. Believe him that the last set of rulemaking didn't go through because there were technical violations with the statute. He hopes they don't get into that same situation again this year. Ms. Perkins stated that she was trying to go through her mind what 281 says about sire stakes funds and that money. She can't remember how it goes but she said there

was some wording in there about distribution of purses. Commissioner Timmons stated that he heard AAG, Guay was going to help them work through this. AAG, Guay stated that he reviewed the current language against 281 and he didn't see any defects. He's initial opinion based on the existing language is he would be able to approve for form and legality. Mr. Jennings stated that he didn't think it says anything about percentages in 281. He thinks it says it can only be used for purses and promotion. Commissioner Timmons asked for an overview on Chapter 11 from Mr. Jennings. Mr. Jennings stated that they changed the date of the version of the ARCI uniform classification to align with the most recent one because there were some things that were put in there. He would then point out on page 6, he put some draft language in here about use of alkalizing agents and the reason they are proposing this language is they get the results from all of the TC02 test and TC02 test has because the biology of the animal has enough variability between animals that you can't come up with the number that shows every time somebody's put baking soda in the feeder or tubed the horse. There has to be an allowance for the variability of the horse so those numbers are fairly generous in the TC02 rules. When you analyze the data and you look at all of the test we take, they can see a pattern where it looks like horses trained by certain individuals on average have higher TC02 numbers then horses trained by other individuals. When they see that pattern, they are going to notify that person and then it's going to be clear that they are going to be targeting those horses for more test. That's their proposal. The systems evolved. People figure out how to administer substances in ways that don't violate the rules. We want to try to discourage this as much as possible. The major change after that is that they no longer are going to incorporate by reference the list of therapeutic medications not the prohibited substances. There are two list. One is you can't have prohibited substances you just can't have any in the system. Then there's a list of therapeutic medications that have thresholds and they went through this threshold question in fair detail recently. All they are doing is getting rid of the recommendations for dosing and withdrawal and the reason is because it kind of puts them in two roles at once. It puts them in the role of regulator and it puts them in the role of veterinarian. The state is now recommending how to administer substances and how long to wait and that's really the job of the veterinarian. It makes the licensees job of defending their use of medications much easier when the state is telling them how to do it. He had this comfort around it from the beginning and it just has recently become clearer that that is going to make it harder for them to enforce the rule. Starting on page 13 they are moving that list into the rule. Taking out the dosing and withdrawal guidelines. AAG, Guay stated that at the end of the meeting they are going to do an executive session. The department of agriculture has filed an appeal against the Commission and he is going into executive session with the Commissioners to discuss the appeal. The licensees have also filed a cross appeal, so the Commission essentially has a dispute with the department and has a dispute with the licensees. However, one of the things that these cases have indicated is that there are potentially some constitutional challenges to our system of regulating prohibited substances. And with that he sees this rulemaking as an excellent opportunity to protect ourselves in the future and future Commission decision makings against certain constitutional arguments. He really doesn't want to get into them because again he really would prefer not to be seen as making an admission, or sort of laying out a framework that people could argue against his client here during any of the appeals. But what he would specifically ask leave to do and he would like this to be on the record as part of this rulemaking he would like the Commission to authorize him to seek a letter testimony if you will from the department veterinarian again without getting into any specific details the details of the letter would obviously they would be part of the public record but it would be really helpful in rulemaking if we had a statement by the veterinarian addressing certain things regarding medication on the schedule and because it's the department and the Commissioner conceptually arguing over deception he thinks it makes sense and he understands what the issues are and he understands what the arguments are and he would like the Commissioners to authorize him and hopefully Mr. Jennings you feel comfortable with this obtaining sort of a statement to get onto the record during rulemaking in relation to this specific schedule. He'd like that to be incorporated as part of the rulemaking. Do you have any issue with him doing that contacting Dr. Matzkin and asking? He can review with you anything he submits during the rulemaking process. Mr. Jennings stated that he is in a spot where he's sometimes not sure who he works for. He has no problem with him submitting the request. He said to submit the request and he needs to vet it and make sure he's not going to get in trouble. AAG, Guay stated that it is complicated with the department essentially suing the Commission. He sees an issue that really is a potential issue in these rules that could be rehabilitated. Maybe we'll take another shot at the rules after their litigation is over. He won't try to proceed. Mr. Jennings stated that all he wants is the opportunity to share the request. He's kind of caught in the middle. AAG, Guay stated that he's making a request regarding rulemaking. Are you saying that you're acting on behalf of the department right now on the rulemaking or are you acting on behalf of the

Commission? Mr. Jennings stated that he has responsibilities to both. Commissioner Graham asked if the Commission can ask him to do that. AAG, Guay stated that he's asking the Commission to ask him to try to get input from the vet so they can have a record so if they have another prohibited substance case that they have a basis to defend against an argument defend your Commission rule against an argument that is potentially unconstitutional. Commissioner Graham asked the Commission to grant your request to ask Dr. Matzkin. AAG, Guay asked if all the Commissioners agreed. All Commissioners agreed. Mr. Jennings asked for comments on Chapter 11. Ms. Perkins asked to go to page 12, section 4. She wanted someone to tell her what the version of that rule means. It says, veterinarians may administer the following medication to participating horses provided that the urine and/or blood concentrations are below the maximum allowable concentrations listed in the table below, on any day for which the horse is entered to race. Are you telling her that the day a horse is going to race that the veterinarian can give him medication. AAG, Guay stated no, that's not what the rule says. Ms. Perkins asked what does it say. AAG, Guay stated it says that the horses provided that their concentration is below their maximum allowable concentration on the race day. That's what it says, at least that's the way he reads it. Ms. Perkins says the veterinarian may administer on any day in which the horse is entered to race. AAG, Guay stated that he doesn't think this is an issue in any of the appeals. If you read the decision and order in a controversial case, there's a question of permitted medications being different than prohibited substances. What this is saying he thinks this provides a very good basis, that if a trainer shows up and says hey this is a permitted medication, that somehow, it's magically not susceptible to purse return. This says that a veterinarian must administer it. We don't regular veterinarians. A veterinarian will not administer and he thinks the Board of Veterinarian Medicine would sort of expect veterinarians administer drugs to animals based on the use that they are supposed to be used for and for conditions for the horse. We are trying to say that medications can be administered to horses but they have to be administered by veterinarians. Ms. Perkins asked on the day of the race. She was on the assumption that the rule said that medication could not be administered. AAG, Guay stated that's part of the problem is that we've gone away from a time of administration to a blood level because otherwise the department would have to prove that the old rules where you couldn't administer this within 3 days of a race. That's a very very hard thing to prove. The veterinarian can give a horse albuterol the day of the race as long as the blood level doesn't go higher than these things. It doesn't matter when the veterinarian gives the drug what matters is how much drug is in the horse. Mr. Jennings stated that we can split it into two sentences because he thinks she's looking at the subject and looking at the prepositional clause. Ms. Perkins stated that it's a shock. In the past, they always had a rule about 48 hours and we always had a rule about 72 hours so now that's been thrown out only on certain medications this rule applies. AAG, Guay stated that's correct this list. Ms. Perkins stated that she thinks they are opening up Pandora's box. Commissioner Graham stated that it looks like they are closing Pandora's box. What it's saying is now if you've got a level up higher than this amount bingo your guilty period. In his mind that's what they want. Commissioner Timmons asked for overview of Chapter 17. Mr. Jennings stated in Chapter 17 the only thing different than the last proposal is on page 1 and Title 5 has got some language about suspensions and administrative licensing and so it's kind of saying what you can and can't do. They are trying to mimic that language and allow the Commission to suspend licenses and you can do that for up to 30 days without a hearing. The department or in this case he thinks a judge could suspend a license you may need to delegate that for up to 30 days without a hearing but beyond that you can't suspend a license without a hearing or opportunity for a hearing. We may have some issues with some of the suspensions that you have in this chapter for up to seven years for medications. He always had an issue with the tables that start in section 4 because the odd part to him is they keep repeating the maximum penalties but they don't repeat the minimum penalties and the language in columns 2, 3, and 4 never change. Why not say what the minimum and the maximum penalties are and list out what they apply to. One thing from last time we are getting repeat offenders and the 365-day lookback is not your only opportunity to consider the history of a violation. This allows you to look back at least 4 years. Ms. Perkins asked on page 3 in Chapter 17 under E it says have in your possession within the grounds. She didn't know if you would be running into any trouble what it meant within the grounds. In the past, there has been some discussion within the grounds of the racetrack. AAG, Guay stated that was generally regarding excluding people from the grounds and generally let him quickly reiterate that analyzes. If a private landowner meaning the person that owns the track says you know what I don't want, you on my property. They have a right to say that; as far as the Commission, they have jurisdiction over the licensed facilities in terms of excluding people because people are required to have licenses to be in certain areas of the track during meets so that's within their power; however, if a person is going into an area that the public can access the Commission really doesn't have power over the public

generally so that's been the limitation. What this is saying is different. If you're licensed by the Commission and you got drug paraphernalia around the racetrack that's a violation. That's different than saying you can't go if you've been suspended. It's a different thing. Ms. Perkins asked to go to page 4 it says altering a horse's hobbles without permission. Who do you get permission from? Mr. Jennings stated that they changed 7 about hobbles. Mr. Sweeney stated that he can clarify that from an official's standpoint, it's implied permission. The trainer's responsible to report it to the paddock judge who reports it to the presiding judge. Mr. Jennings stated that it says the judges. He thinks it's ok the way it is. Ms. Perkins stated at the bottom it says failure to pass a breathalyzer test. Is that the only test that we give with this new modernization? Mr. Jennings stated that everybody gets the breathalyzer test who's going to drive. Mr. Greenleaf stated so does the officials. Mr. Jennings stated that right now they are doing urine test. Two years ago, they were doing the swab test but the difficulty was getting the confirmation so the state has a master agreement for that type which is a statewide contract for the urine test so they just piggy backed on that contract. They have urine cups that give you an instant reading, and if it looks like it's a positive the track can say they don't want that person racing today and they will send it to the lab. Ms. Perkins stated that it's not on here. AAG, Guay stated that it's defined in other rule chapters. Mr. Jennings stated it has its own penalty. AAG, Guay stated that this is a penalty schedule not a violation schedule. There are things that will not be on here but the Commission will look for the closes analogist. The general rule of construction is just because it's not listed doesn't mean the penalty is not there. What they would do is the state would argue for failure to take a urine test is similar to taking a breathalyzer test and it was proposed it would be fined at that level. Ms. Perkins asked to go to page 7. It says failure for the judges or the state steward orders. She was surprised that the state stewards name was there. She didn't know what their jurisdiction was. She thought the judges were the soul ones in charge of that race program, and the state steward was just in between the racetrack and the Commission. AAG, Guay stated he doesn't believe that is correct. He believes the state steward is the representative of the Commission or department at that track and they have the power of the Commission or the department there, so if they order something. Ms. Perkins asked to go to "N". It says using threatening language to a racing official she's sure it's covered somewhere to other drivers or other participants. Go to page 8 under "E", she doesn't understand it. Drawing a horse from race without permission. Is drawing the right word. Mr. Jennings stated it's what was there. She didn't think the word drawing was correct. AAG, Guay stated that the Commissioners think it's ok. Ms. Perkins didn't see where talking on the track and then where is getting your sulky inspected. AAG, Guay stated that the point is that they could think of every conceivable violation and add them in here. Ms. Perkins stated that if it's not listed they weren't able to do anything. Mr. Jennings stated that it's in 7 and it says you shall not do this. There is under section 2 on the first page where it says any licensee or participant found in violation of the rule that's not specified in this chapter and it gives you the maximum which we just changed and it recognizes that now everything is going to be in here. Some of them specify a sanction in the rule. AAG, Guay stated that there is a change and it would be fairly significant as far as the Commissioners are concerned. The guidelines have changed from guidelines to a schedule and you would not have any flexibility to deviate from those fines and he's not saying that's good or bad but just be aware that you've had significant number of cases where the schedule would require a \$250 fine and you waive all but \$50. You have discretion when it's a guideline but now you're going to lock yourself in to the number and you're not going to be able to move off that number, rather that's good or bad that's a matter of opinion but be aware that you're going to be doing that. Mr. Jennings stated good job catching that. If you think penalties are too high the better policy is to reduce the minimum and stop suspending the penalties as opposed to doing it the other way. If you put guidelines in there it's a recipe for wild variations in the administration of the schedule. AAG, Guay stated to the Commissioners they need to decide whether or not you want to limit themselves to the schedule or not. Commissioner McFarland stated that he likes the idea of a schedule. Black and white, it's a lot easier to define. Commissioner Graham agreed. AAG, Guay stated to be prepared during deliberations that if you want to move off he will remind them the schedule doesn't allow you to do it. Mr. Jennings asked that wouldn't preclude them from saying this one administration that resulted in the two positives could be considered a single violation. AAG, Guay stated that's actually is really under control of you how you plead the case, so if you come saying we're bringing one case, one count you have that control, arguably so that's the first bite of that apple. The second bite of that apple, specifically the Commission can say well we understand the department that you think it's two cases but we think it's one. As far as the actual dollar amount and the days, he's written 80 percent of the decisions and they fine \$250 fine with all but \$50 suspended. You make that motion in the future, he'll say Commissioners you don't have that discretion to do that anymore. He personally thinks it's more

transparent and it would appear to take some of the potential unfairness that you could be showing favoritism to certain people, and other people because a violation has a certain penalty so there's benefits there. Typically, people who make decisions don't like to limit their discretion so once you do that, you adopt this rule you won't have that discretion. Commissioner Timmons asked for any other comments. There were none.

#### 4. **Adjudicatory Hearings:**

**a. Hearing on an Application from Pioneer Gaming, LLC, D/B/A Favorites OTB for a Facility License at 38 College Avenue In Waterville.** Pioneer Gaming, LLC., operates an off-track betting (OTB) facility at 6 Jefferson Street in Waterville. That building has been sold to new ownership. Donald Barberino is proposing to move the operation to a new location at 38 College Avenue in Waterville. The Commission will hear testimony about the merits of the proposed facility and determine whether it meets the approval requirements outlined in M.R.S. 8, § 275-D(6). Don Barberino was present and represented himself. AAG, Guay opened the hearing on Pioneer Gaming, LLC. He stated that the statute requires that all off-track betting facilities in the State of Maine be licensed by the Maine State Harness Racing Commission. Moreover, the statute requires that specifically as part of the licensing that the facility be found to be adequate for an off-track betting facility. He will note for the record that the licensee was previously licensed in the last licensing procedure but wish to change their location. He has given advice to the Commission that a change in location meant a change in facility; and therefore, that facility needed to be reevaluated by the Commission in order for the license to be continued. The department has upon advice of their legal counsel stylized this as a new licensing proceeding. He had suggested they reopened it and just deal with the facility. He suggests for purposes of moving this forward it really is a distinction that doesn't make a difference. Is there anybody here that's planning to intervene on behalf of this license. Is there anybody here today that wishes to speak on this matter. Is there anybody else in the audience that wishes to be heard on this matter. There were none. He stated that the parties would be Mr. Barberino and Mr. Jennings representing the department. This has been stylized as a licensed application. He asked Mr. Jennings if he would be willing to stipulate that all of the conditions that were present with Mr. Barberino's license when it was considered last November are in place except for the very limited issue that the facility has changed location. Would you be willing to stipulate to that? Both Mr. Jennings and Mr. Barberino stated yes. AAG, Guay stated to the Commissioners that the only thing they are going to deal with today is the location. All the other conditions that you would typically take a look at and there are a number of them, and you do not need to do that because the department has stipulated that those conditions have not changed. He still has the right to a license because those conditions haven't changed. He asked the Commissioners if there are any Commissioners if they have any personal knowledge as to the change of location or the specific facility that Mr. Barberino seeks to be licensed. The Commissioners responded no. Do any of the Commissioners have a business or personal relationship with Mr. Barberino that would prevent them from being fair and unbiased in this proceeding. The Commissioners responded no. He asked if there were any members of the public that would like to join this proceeding. Seeing none he would like the record to reflect that there are no intervenors. Are there any exhibits to be entered? Mr. Jennings stated that the Commissioners have a copy of the application. Mr. Barberino submitted some additional information after he submitted the original application. AAG, Guay asked if the Commissioners have a copy of that. Mr. Jennings stated yes. AAG, Guay stated that he would like the record to reflect there was pre-filed testimony. He asked Mr. Barberino if he objected to the pre-filed testimony. Mr. Barberino stated no objection. AAG, Guay asked both Mr. Jennings and Mr. Barberino if they objected to the proceeding up to this point. They both responded no. Let the record reflect that there is no objection to the proceeding up to this point. AAG, Guay asked Mr. Jennings if he had a recommendation to the Commission that you would like to make regarding the licensing of this facility. Mr. Jennings stated that Mr. Greenleaf and he visited the proposed facility a while ago and it is attached to a sports bar and there is opportunity to move between the two facilities. He finds the location to be one in which he thinks it's more likely that you're going to get more patrons and businesses. He thinks the opportunity to get food other than what has been served in the past is an improvement and the location is an improvement. The department would recommend approval of the license. AAG, Guay stated that he doesn't see the need to open up the record and take specific oral testimony unless someone wishes to challenge the representation of the department. At this point in time is there anything that the state would like to say. Mr. Jennings stated no. AAG, Guay asked Mr. Barberino if there is anything he would like to tell the Commissioners prior to the voting on your application. Mr.

Barberino stated that he is excited and his employees are excited to be moving into the new location because they are back on College Avenue going into downtown Waterville and much more visible location for them. They are adjacent to a sports bar which she has a clientele that can access their facility. As far as growing fan base and generating new people to come to the races is much better than where they were. He's looking forward to it. AAG, Guay stated that he will note that Mr. Barberino did present argument. What he has before you Commissioners are a recommendation by the state that is not opposed by the licensed applicant and he would waive the formalities of taking oral testimony on this unless any of the Commissioners think there's a need to do so. The Commissioners stated no. AAG, Guay stated this is the last opportunity to challenge the license. Seeing none. He declares this hearing closed and he would turn it over to the Commissioners for a motion and deliberation on granted the license for Mr. Barberino. Commissioner Timmons asked for a motion. Commissioner Graham made a motion that they grant the license to Pioneer Gaming in the Waterville location. Commissioner McFarland seconded. Vote 4-0. AAG, Guay stated if the Commissioners would agree and if the parties would agree we'll defer the effectiveness of this and may it effective today without an issued decision and order. He would ask that the minutes reflect that the Commission did take this action today.

**b. RE: Hearing on the Horse Supply.** Pursuant to 8 M.R.S. § 271 (7), the Commission will take testimony to determine whether the horse supply in the State has been adequate for the number of dashes conducted on assigned race dates and may limit the number of dashes that a licensee may race after August 1. Commissioner Timmons handed the hearing over to AAG, Guay. AAG, Guay stated under the statute the Commission is required to hold a hearing and he's not sure it's adjudicatory in nature but he guess because potentially the Commission could order a decrease in the moderates that any license holder has that they will consider this being held under Title 5. Commissioner Timmons handed the hearing over to AAG, Guay. AAG, Guay stated that under the statute there is a requirement that the Commission hold a hearing. He's not sure it is adjudicatory in nature. He stated that the Commission could order a decrease in the moderates that any license holder has that we will consider this being held under Title 5 Administrative Procedures Act. We will go through some of the formalities here. He will note that several parties have automatic intervenors status, so for those of you in the audience if any of the automatic intervenors here today wish to ask any questions or present any evidence during these proceedings you're free to do so. He would ask that you identify yourself at this point in time if you are participating in these proceedings. He sees a licensee and Scarborough Downs that would like to participant in the proceedings. AAG, Guay asked the person in the audience who he represents. He stated the public. He has all the records and tabulations of Scarborough Downs. AAG, Guay stated that he would have to rule on whether he could intervene. He asked if either Mr. Jennings or Mr. Sweeney if one of them would be willing to call the person in the audience as a witness instead of giving him intervenor status that you would agree to call him. Mr. Sweeney responded sure. AAG, Guay would not let him in as an intervenor but he is going to make sure he gets to testify. He qualified the Commissioners. He asked if there was any objection to the proceeding at this point. There were none. He gave Mr. Greenleaf his oath. Mr. Jennings asked questions of Mr. Greenleaf. Mr. Greenleaf stated that the 8 horse fields were extremely higher than last year. He also stated that he was looking at Scarborough and Bangor mainly. Overall, he stated there was an adequate horse supply for the number of dates and dashes, and the handle is up. AAG, Guay asked Mr. Greenleaf if he prepared the document labeled 2018 MSHRC Horse Supply Tracking Sheet. Mr. Greenleaf stated yes. AAG, Guay asked if there was any objection to admitting the exhibit. Mr. Sweeney stated no. AAG, Guay asked Mr. Sweeney if he had any questions for Mr. Greenleaf. Mr. Sweeney asked Mr. Greenleaf if he was correct to assume that it would be his opinion that the remodeling of the industry in regards to the number of days that they were racing has helped to alleviate some of the horse supply issues that they experienced in 2017. Mr. Greenleaf stated he would think so, yes. Mr. Sweeney asked if he thought the remodeling of the industry in regards to the number of days that they were racing has resulted in a higher handle. Mr. Greenleaf stated that he thinks the number of horses in each race has increased the handle. AAG, Guay asked Mr. Jennings if he had any other witnesses. Mr. Jennings stated no. AAG, Guay asked Mr. Jennings if he had a recommendation. Mr. Jennings stated that they've talked about this and clearly, they've got better statistics than had last year and they didn't limit the number of dashes last year so he doesn't see a reason to limit the number of dashes this year. AAG, Guay stated to the Commissioners that the recommended action would be that you not vote to reduce the number of dashes or dates. He stated to Mr. Sweeney that he has an opportunity to make an argument one way or another either in support of or in opposition. Mr. Sweeney stated that he would like to speak in support of the recommendation. He concurs with Mr. Greenleaf that the horse population has

improved significantly this year over last year. He did think that the fact that some of the associations have downsized the number of days that they've raced to helped right size the industry significantly. They opened up with a much stronger horse supply in the state than they anticipated to have. It held firm through the Bangor meet when Bangor and Scarborough were both racing together. He really thinks they had sufficient horses for both to race a three day meet. He felt very comfortable with the population that they could draw from in Scarborough. It got a little bit tighter once the fair season started to get underway. AAG, Guay asked Mr. Sweeney if he had any witnesses or any evidence. Mr. Sweeney stated by agreement that he would like to call Richard Shiers as a witness. AAG, Guay gave Mr. Shiers his oath. Mr. Sweeney asked Mr. Shiers what he would like the Commission to know about the horse population this year. Mr. Shiers stated that he would like to share with them that the racing at Scarborough Downs has been top quality some of the best he's seen in the last ten years. They've had 8 horse fields almost predominantly all season. He has all the draw sheets right here. AAG, Guay asked if there was any objection to the Commissioners looking at the draw sheets. There was no objection. Mr. Shiers stated that this is a huge turnaround from 2017. AAG, Guay asked if there were any questions for Mr. Shiers. He stated that Mr. Jennings would like to enter into exhibit it's a letter to Mr. Jennings from Debbie Patterson it's undated and she's the MHHA secretary regarding race dates. Ms. Patterson stated that it's not really race dates. Because horse supply has been so good they had a meeting and they want to keep it that way so they want to urge the Commission to do a little bit of classified racing. Mr. Sweeney stated that he has no objection to entering that. AAG, Guay stated that Mr. Jennings has moved for the admission of a letter from Ms. Patterson it's undated regarding not race dates but horse supply. He asked for anything else in terms of testimony or exhibits. With that he closed the evidentiary part of the hearing for you to consider the un rebutted recommendation not to do anything. Commissioner Timmons asked for any comments. Commissioner McFarland stated that as far as the horse supply goes he's been following it right along and he would reiterate everything that the other people have already said. He was as shocked as certainly they are for whatever reason there's a lot more horses starting out early. They've been able to sustain them so far and we hope they can. He also hopes that in this rule change that they are proposing after it goes through this lengthy process that it has too. May also be a plus in the horse supply with respect to giving those 6<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> horses a little bit of gas money for participating. He would like to make a comment that Windsor Fair will be doing some classified racing this year. Commissioner Timmons asked for a motion to not adjust the race dashes. Commissioner Graham made a motion to not adjust the race dashes and leave it as is. Commissioner McFarland seconded. Vote 4-0.

5. **Input on Marketing.** Public Law 2017, Chapter 371 dissolved the Maine Harness Promotional Board effective August 1, 2018, and reassigned promotion to the Commission together with the allocated funding. Section 1 of Chapter 371 specifies that the Commission must invite input on the promotion of harness racing from all sectors of the industry. The Commission will discuss the manner in which they wish to invite input for 2018. Mr. Jennings stated that same law requires that the type of input that was contemplated by the structure of the Maine Promotional Board be carried forward. They need to solicit input from all of the segments of the industry about marketing the industry. What he wanted to suggest for 2018 we can't get to far into the weeds because the season is two-thirds over. What he would suggest for this season is that he reach out to the three associations (the fair, MSBOA, and the MHHA), the two commercial tracks and the four OTB's and invite them to submit ideas and comment on marketing. We basically have the whole year mapped out already for a marketing plan, and then when we get to the end of the season we will create a committee that is essentially we'll have to think about how we're going to balance the representation evenly; but nonetheless, we'll create an ADHOC committee where all the segments have representation and more of a standing committee and then we will have a couple of meetings in the off season to talk about what they want to do for the upcoming season then we'll map out a plan. In order to be consistent with the law, he's simply suggesting to them that for this season we simply reach out and ask for ideas and comments on marketing for the remainder of the season. We're not able to make significant changes to what we've been doing but if we get some great ideas or some comments we can certainly adjust. It's not a time to overhaul the system right now if that needs to be done we can do that in the off season. That's what he is asking from the Commission. Commissioner Timmons asked for any comments from the Commissioners. Commissioner McFarland stated that they did some radio broadcasting this year on 1160 AM. His understanding is it reaches out more through the social media aspect of their website. It probably doesn't reach many of the older generation and you are limited with your AM length of broadcast. Commissioner Timmons asked if they are ready to accept what Mr. Jennings has said and that they would continue with the

rest of the year with suggestions and input. Mr. Jennings stated as the race season starts to wind down we'll start soliciting names to form a standing committee for subsequent years to provide input. Mr. Sweeney stated that he is just curious because he knows they are in a transition period and funds that had been going to the promotional board are now going to the Maine State Harness Racing Commission. Mr. Jennings stated that essentially the department and the Commission has control over the funds. Mr. Sweeney asked if the funds are delivered to the Commission based upon a calendar year. Mr. Jennings stated no. They come in with the handle payment. Every time we get a handle payment it gets split into how many other pieces. One piece goes into that account. Mr. Sweeney stated that you need to make projections at the beginning of the year so you know what might be coming in throughout the course of the season. Mr. Jennings stated correct. Mr. Sweeney asked how much money do you think you are going to need. He knows the promotional board has already allocated some money before it was resolved. Mr. Jennings stated yes, they did what they normally do and to make their commitments. Mr. Sweeney asked what his expectations for the funds for the remainder of the year for him to be able to disburse. Mr. Jennings stated that he knows there was \$13,000 in the account on August 1st. He knows that last year there was \$50,385 total of revenue; of course, it depends on what happens to the handle. He would think overall the handle doesn't seem to be dropping dramatically in some places. The OTB's aren't necessarily prospering the way that some of the tracks are. He's hoping it at worst be flat. What they did was take 5/12 which represents August through December of the calendar year, do the fraction and multiply it by \$50,000 that's the estimate of what they thought might be available. That comes out to \$20,000 additional dollars. It's just like trying to predict what the legs of the sire stakes are going to be. It's hard to do when you're looking in the crystal ball. He knows that the promotional board also had some residual savings and that money should be coming to them. There's cash available and there's legislative allotment and their allotment is \$50,000. It's not difficult in a dedicated account like this is. It's not grant money and it's not general fund. If we find there is more than \$50,000 then they submit a financial order or budget order to increase the allotment. Mr. Sweeney asked if the promotion board kept money in or carried money over from year to year in the past or did they expend all that money in any given year. Mr. Jennings stated that Ms. Damren would be in a better position to answer the question, but his suspicion is like any dedicated account you don't want that to go below zero. Mr. Sweeney stated that in some governmental accounts if you leave money on the table you run the risk of it getting swept. Mr. Jennings stated that they cannot prevent the legislature from doing what they can do but it's clear the language on the account that any balance remaining at the end of the year is supposed to be carried over. Commissioner Timmons asked Ms. Damren if she had any comments. Ms. Damren stated that she spent time with Mr. Jennings he understands exactly the turnover and the fact that they had to wait for contracts that they had and she's waiting for the final checks to come in. She did have to issue two in August to cover the balance of the contracts. As soon as those come in she will talk to Mr. Jennings and give him a full report. Mr. Jennings asked if they needed to vote on that. AAG, Guay stated that there's nothing to vote on, maybe to accept your recommendation. Commissioner Timmons stated that you are all set.

6. **Delegation of Suspension Authority.** 8 M.R.S. § 283 requires the Department to obtain current listings of persons in harness racing occupations regulated by the Commission whose license has been refused, revoked or suspended in another jurisdiction, and to suspend the license of anyone suspended elsewhere. In order to effectively implement this requirement, the Department recommends delegating the suspension authority for up to 30 days to the track judges. Commissioner Timmons asked Mr. Jennings if he is going to report on this. Mr. Jennings stated yes. What happens is that people who race in Maine in any capacity sometimes get suspended in another state; unfortunately for us most of the time they assume they're also suspended in Maine. That is not consistent with what the law says. The law says, if someone is suspended in another state you as the commission and they as the department bring that to you and you have to take action to suspend them. What they are suggesting is, Title 5 allows for a suspension of up to 30 days without a hearing. What he is asking them to do is to allow the judges if somebody is suspended in the middle of the year if they're suspended for 10 days allow the judges to suspend them in Maine for 10 days. Then if somebody baulks and says ok, I'm suspended in Massachusetts but that doesn't mean they're suspended in Maine. It gives the judges the power to say oh yes you are, you're suspended in Maine. AAG, Guay stated that he is going to say that and Mr. Jennings and he have been talking about this and he is supporting finding the way to do this. Subsequent to their initial discussion they've had the appeal filed and as a result of that he's had to do a lot of research and he's looking back when the Commission was a little puppy and growing up and looking at the legislature what they did and didn't do regarding authorities, and based on some of that



research was a clear cut simple thing to do so he's come across some additional information that he's going to contemplate and figure out. Mr. Jennings describes Title 5. Title 5 is a suspension without a hearing. There are two areas that could potentially apply to harness racing. One is for things that happen at the track where immediate remedy has to occur to protect the integrity of a race sort of like on that day, so it's arguable it's going to be hard in a court of law to say that. Someone was suspended in Pennsylvania therefore it's creating an emergency at a track on that specific day that somehow, it's going to affect that race that that person was in that race. The other standard has to do with reciprocal licensing and the concept there is if he had a license in Maine because he has a license in New Hampshire so he comes to Maine and hey he wants to do this and the law allows him to get a license in Maine because he has a license in New Hampshire if New Hampshire suspends his license than his license in Maine becomes suspended. Then in harness racing statute you've got this reciprocal thing that came into effect before the changes to Title 5. It's turning out to be a lot more complicated. AAG, Guay would like to do is prepare a resolution and he thinks this is something they should start doing in this agency where the Commission if they delegate to the track judges or the stewards or anyone, that you vote on it and you can see exactly what you're voting on. But typically, when he writes one of those resolutions he gives the legal basis for it, and the reason you do that is if the law changes then you can look at it say oh that law changed the day before the resolution may not still be in affect; so yes Mr. Jennings idea makes tremendous sense, practical sense. Unfortunately, he's spent all of his time writing stuff on the appeal and he hasn't been able to solve the problem yet from a legal perspective. When he gets a chance he will try to come up with a resolution that you folks would do, assuming you want to do that you want to allow the judges at the tracks if they know that somebody's suspended in another jurisdiction to preclude them; and the whole reason for that is, you folks only meet once a month so who has the ability to take action immediately that would be the judges instead of waiting until you guys come together. If you agree with the concept he will work on it. He has nothing to give you to agree or approve but if you like the idea he will try to find a way to get the Commission there. Do the four Commissioners wish to pursue that. Commissioner Graham asked so does that mean now if someone is suspended in Massachusetts they're not suspended in Maine. AAG, Guay stated that the plain language of the statute says the Commission shall suspend, so the issue is under the definition of the law the four of you right now are the Commission. So, we've got to find a way so it's not the Commission but rather you've delegated it so the judges can do it. There is other language in there that suggest under 279.C that the track judges can enforce things that you guys have done, but we don't have a rule right now that allows it. Rulemaking takes a while so maybe we can do with a simple delegation. If you agree with the end point he will try working with Mr. Jennings to find a way to get there. Commissioner Graham stated that he certainly thinks we need it. Commissioner McFarland stated that he approves the authority for AAG, Guay and Mr. Jennings to continue to work on this matter. Commissioner Timmons concurred. AAG, Guay stated that the whole point is that he and Mr. Jennings can spend dozens of hours on research and him on legal research but ultimately if we bring it back to you and it's not something you want to do then they've wasted their time. Mr. Jennings asked if they needed to table this until the next meeting. AAG, Guay stated yes, but it's good to know that he won't be able to get something by the next meeting based on he has devoted over 100 hours and several hundreds of hours of time on this appeal. Commissioner Graham asked what happens right now if somebody's suspended let's say next week in Pennsylvania and they come to Maine, they can race. AAG, Guay stated that he would suggest that two things, one rather than advertise the fact that there may be needed Commission action that their self-limiting behavior is something we want to continue to encourage. He would suggest that we not discuss the fact that we need to solve this. He's not sure what legal authority who has the authority other than the Commission. If you guys want to meet whenever someone gets suspended have a meeting here and suspend that person we could do that but absent that he doesn't see how they can do that right now. The tracks could say you know what, you're suspended. Commissioner Timmons stated that if something came out that someone was rude, fighting, and belligerent in another facility and yet suspended and they came to Cumberland, and they had an issue he would talk with the judges. But as far as Cumberland is concerned, we can say we're sorry sir you came in the dooryard and now you need to leave it. If they don't want to leave, he can get the police and the police can take them away. He asked if they were all set with this issue.

## **8. Other Business:**

Mr. Jennings asked Mr. Greenleaf if he would update the Commission about the status of the laboratory. Mr. Greenleaf stated that they have switched labs for our testing. We are using AMTL University of Chicago in Illinois. The cost has gone down per sample from \$120 to \$75. They came and met last month

in Bangor, and down in Scarborough and met with Dr. Matzkin. AAG, Guay asked if that was horse sampling or human sampling. Mr. Greenleaf stated blood samples for horses. Commissioner McFarland asked if he has sent blood samples to them already and did any of those come back. Mr. Greenleaf stated yes and some have come back. Commissioner McFarland stated to Mr. Greenleaf that they've entered into a contract for what period. Mr. Greenleaf stated a one year contract with the option of four renewals.

Commissioner Timmons asked for any other business. Commissioner Graham asked AAG, Guay what happened on his investigation with Oregon. AAG, Guay stated that they haven't gotten back to him. That's another thing, again all his time has been focused on the appeal so when he can get off it he is going to call Oregon and say what's up. He finds it odd that they haven't responded.

Commissioner McFarland stated that Windsor Fair will have the first front stretch camera in operation during their meet. This did come as a cost and he doesn't know if it falls under marketing. The cable itself was \$200 to \$250 and the charge from International Sound \$125 extra a day that's \$1,325 and they're spending out of their pocket between \$1,300 to \$1,400 to have this work for the judges up there in the box. He also wanted to mention the winningest horse of all time purse money is coming to Windsor Fair on Labor Day September 3rd. Foiled Again is 14 years old and his owners have seen fit for him to travel around the country on his farewell tour and they were very fortunate to be selected in Maine for this horse to be there. He expects and anticipates a huge crowd to just see and observe the horse. It will race Labor Day at Windsor Fair.

**9. Public Comment**

Commissioner Timmons asked for public comment. Ms. Perkins stated that she would like the Commission to be aware that for the first time they've had two dead heats with sire stakes horses. She doesn't believe she's ever seen that happen before. Last night Mr. Jennings shared with them that they have money in their sire stakes fund regarding promotion and also for purses. The sire stakes of the board last night agreed starting August 28 that they are going to add \$1,000 to each of the legs from now on until the end of the season. The reason why they are doing that is because last year there was a misunderstanding but they did have \$75,000 left over in that fund and that created a stir. At first people thought it was over \$100,000 but they straighten that out, so this year rather than having money left over they are going to add it to the legs. They thought it would help people stay in the business a little bit longer.

**10. Schedule of Future Meetings:**  
September 13, 2018

**11. Adjourn**  
12:40 p.m.

Commissioner Graham made a motion to go into executive session. Commissioner Reed seconded. Vote 4-0.